STATE OF MICHIGAN

COURT OF APPEALS

DEBBIE WATKINS,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS and STATE OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
September 25, 1998

No. 198434
Ingham Circuit Court
LC No. 94-079320 NZ

Before: MacKenzie, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

Plaintiff, a corrections officer employed by defendants, appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) on her claims of hostile work environment, sex discrimination, and retaliation. We affirm.

Plaintiff first argues that the trial court failed to state sufficient grounds for dismissal of her discrimination and retaliation claims. However, plaintiff has failed to support this argument with any citation to statute, court rule, case law, or legal authority. Because plaintiff has failed to support this argument with citation, it is considered abandoned on appeal. *Check Reporting Services, Inc v Michigan Nat'l Bank-Lansing*, 191 Mich App 614, 628; 478 NW2d 893 (1991), *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997).

Plaintiff next argues that the trial court improperly engaged in fact finding when ruling on defendants' motion for summary disposition. We disagree. A review of the record shows that the trial court accepted plaintiff's allegations as true and determined that they nevertheless failed to establish a genuine issue for trial. This was proper. Compare *Quinto v Cross & Peters Co*, 451 Mich 358; 547 NW2d 314 (1996).

Plaintiff also argues that the trial court erred by granting defendants' motion for summary disposition with regard to her claims of a hostile work environment, gender discrimination, and retaliation. Under the Civil Rights Act, an employer may not "discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment," on the basis of

sex. MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). Sexual discrimination is broadly defined to include sexual harassment, including creating a hostile employment environment. MCL 37.2103(i)(*iii*); MSA 3.548(103)(i)(*iii*).

There are five necessary elements to establish a hostile work environment claim: (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of gender; (3) the employee was subjected to unwelcome sexual communication or conduct; (4) the unwelcome sexual conduct or communication was intended to or substantially interfered with her employment or created an offensive work environment; and (5) respondeat superior. *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993). Plaintiff's allegations, as a matter of law, fail to satisfy the second, third, and fifth elements.

Plaintiff submitted materials entitled "It Ain't Easy Being a Dick"; "Woman Chops off Husband's Penis"; and "Banana Bread recipe" as evidence that she was subjected to unwelcome communication on the basis of her sex. Undoubtedly, these materials were crude and in very poor taste. Like the cartoon in *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 341; 497 NW2d 585 (1993), however, the materials could be considered equally offensive to both male and female employees. Furthermore, several of the comments made by co-workers that plaintiff deems offensive did not constitute sexual communications. These allegations include being called fat and a remark that plaintiff would not be able to beat a particular prisoner anymore because he had committed suicide. Again, although the statements may be hurtful and offensive, they are not actionable sexual or gender-based communications. Other allegations of misconduct by plaintiff's co-workers, such as the "white robin award," were based on mere speculation and thus did not raise a fact issue. *Quinto, supra*. Finally, at least one of the alleged harassing remarks was overheard by plaintiff; it was not directed at her.

Plaintiff also offers an announcement that she was pregnant as evidence of a hostile work environment. Although this announcement was gender-based, without more it cannot be considered a form of harassment. Compare *Koester v Novi*, 458 Mich 1; 580 NW2d 835 (1998).

Plaintiff has also failed to present a genuine issue of fact concerning the element of respondeat superior. *Radtke, supra,* p 383. This element addresses an employer's liability for its employees' harassing behavior:

> Under the Michigan Civil Rights Act, an employer may avoid liability "if it adequately investigated and took prompt and appropriate remedial action upon notice of the alleged hostile work environment." *Downer v Detroit Receiving Hosp*, 191 Mich App 232, 234; 477 NW2d 146 (1991) (applying the standard to a Civil Rights Act claim). Such prompt and appropriate remedial action will permit an employer to avoid liability if the plaintiff accuses either a co-worker or a supervisor of sexual harassment. An employer, of course, must have notice of alleged harassment before being held liable for not implementing action. [*Radtke, supra,* pp 396-397. Citations and footnotes omitted.]

In this case, the record establishes that plaintiff did not report many of the alleged incidents of harassment to defendants. Without notice, defendants may not be held responsible for a hostile work environment claim. *Id*. In those instances when plaintiff did notify defendants of her co-workers' conduct, defendants took remedial action. *Id.* When plaintiff complained that one co-worker grabbed her buttocks and another propositioned her with a massage offer, defendants investigated and effectively neutralized any similar conduct; one offender was suspended and the second was transferred with a disciplinary note in his file. Defendants' remedial action absolved them of liability for their employees' conduct. *Id*.

Plaintiff next alleges that defendants subjected her to gender discrimination. The crux of a sex discrimination case is that similarly situated persons have been treated differently because of their sex. *Marsh v Dep't of Civil Service (After Remand)*, 173 Mich App 72, 79; 433 NW2d 820 (1988). Here, plaintiff's allegations, that (1) she was the only female placed in the segregation units at defendants' facility, and (2) she was denied legal representation in a prisoner's action against her, do not support a claim of gender discrimination. Both of these allegations fail to show that plaintiff was treated differently than male officers. *Marsh, supra,* p 79. The first claim indicates on its face that plaintiff was treated the same as the male officers. With regard to the second claim, there was no evidence that male officers who, like plaintiff, were found after an investigation to have used excessive force against a prisoner, were provided with legal representation.

Plaintiff's final issue, that the trial court erred in dismissing her retaliation claim, is not supported by any authority and hence is insufficiently developed to bring the issue before this Court. *In re Futch,* 144 Mich App 163, 166; 375 NW2d 375 (1984).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Richard A. Bandstra
/s/ Stephen J. Markman